

REMARKS

Claims 12-20 were examined and reported in the Office Action ("Action"). Claims 12-20 are rejected. In this response, claims 12-15, 17 and 19-20 are amended. Claims 12-20 remain in the application. Applicant requests reconsideration of the application in view of the above amendments and the following remarks.

It was asserted in the Office Action dated June 28, 2007 that the oath or declaration is defective. In response, Applicant submits herewith a new oath or declaration in compliance with 37 CFR 1.67(a) as requested by the Examiner.

In the Action, the Examiner objects to the specification for informalities. Regarding the Examiner's objection that the specification at page 4 does not agree with the translator's note, that specification as previously amended currently reads:

"The punch P of the male tag component T is mounted on the prick punch 5 on the jaw 6 acting in opposition to the jaw 3."

This is correct. The original specification read "The punch P of the female tag panel...", which is of course incorrect. The translator saw this error, and noted: "the French original uses the word female. This is probably meant to be male." The correction is therefore completely consistent with the translator's note. Furthermore, it is quite clear from the drawings (Figures 13 and 14) and the description that the punch P is a feature of the male tag component T, not of the female tag component. For example, various passages on pages 3 and 4 describe the male tag component and its punch P:

"... an ear tag of known type comprising a male tag panel or component, not shown, with a pin in the form of a punch ..."

"... the hollow head into which the punch P of the male tag component is housed ...",

Therefore, Applicant submits that the current specification is correct. Reconsideration and withdrawal of the objection to the specification is respectfully requested.

In the Action, the Examiner objects to claims 12-20 for informalities, the Examiner contending that it is unclear as to whether the female tag component and the attachment and the applicator are being claimed. Applicant hereby amends the claims for clarification. In particular, it is now positively recited that the ear tag includes a male tag component, a female tag component and a sampling device. The applicator tool, although recited in the claim, is recited for the functionality it provides, so as to clarify the structure of the positively recited claim elements. Reconsideration and withdrawal of the objection to claims 12-20 is respectfully requested.

In the Action, claims 17 and 19 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Claims 17 and 19 are amended to clarify that the attachment and sampling device “include a” slit. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. §112, first paragraph, is respectfully requested.

Claims 12-19 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are hereby amended to correct the inconsistencies noted by the Examiner. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph, is respectfully requested.

In the Action, claims 12-19 are rejected under 35 U.S.C. §102(b) as being anticipated by Howe (US Patent 4,694,781). Applicant respectfully disagrees with this rejection.

Howe discloses an animal ear tag which includes a container 25 (Figure 1) or 29 (Figures 5 and 7) for dispensing an insecticide over a period of time. The container may be used to hold other things, such as transponders, other medications etc. (column 5 lines 10 to 19). The container can be replaced by crushing the attachment, removing the damaged container and replacing it with a new container. See column 5, lines 3 to 9.

The Examiner identifies a sponge insert 33 as the sampling material. This insert is of course intended to hold the insecticide and release it over time.

Howe is in no way concerned with sampling biological material. Howe does not disclose a sampling device. Rather, Howe covers a conventional ear tag to which a container can be attached, after the ear tag is already attached to the animal. The container must be damaged in order to remove it from the ear tag and is therefore not suitable for sampling. Furthermore, the container is not separated from the ear tag by operation of the applicator tool, during fixing of the ear tag to the animal.

Therefore, Howe does not disclose each and every limitation of claims 12-19. Accordingly, reconsideration and withdrawal of the rejection of claims 12-19 under 35 U.S.C. §102(b) is respectfully requested.

Claims 12 and 20 are further rejected under 35 U.S.C. §102(b) as being anticipated by Caisley (WO 02/39810). Caisley samples material in quite a different manner to the Applicant's device. Caisley's tag has a sample container 1 mounted to a female part of the tag and a plug 3' mounted to the male part of the tag. As the applicator jaws are closed, a sample is collected in the container 1. This device does not use an absorbent material.

Therefore, Caisley does not disclose each and every limitation of claims 12 and 20. Accordingly, reconsideration and withdrawal of the rejection of claims 12 and 20 under 35 U.S.C. §102(b) is respectfully requested.

In the Action, claims 13, 14 and 16-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Caisley as applied to claim 12, in view of Sanjurjo (US Patent Publication No. 2003/0172560). Applicant respectfully disagrees with this rejection.

As noted above, Caisley does not disclose an absorbent material. Sanjurjo does not cure this deficiency. In Sanjurjo the piece of filter paper is attached to the male component and not the female component as required by independent claim 12. Also, the filter paper lies along the length of the panel of the male component. This means that the filter paper is sandwiched between the male component and the ear of the animal. Consequently, it is a somewhat involved procedure for a person using the device to grasp the filter paper sandwiched between the panel of the male component and the animals' ear in order to remove the filter paper.

This delicate operation is made not only more difficult but also dangerous by the fact that the person needs to be in close proximity to the animal to which the ear tag is to be attached, which is somewhat pained by the application of the ear tag and, therefore, is not in a particularly good frame of mind! Consequently, the arrangement is Sanjurjo places the person applying the tag at risk of being injured by the pained animal. Because of the inaccessible nature of the filter paper sandwiched between the animals' ear and the panel of the tag, the person needs to be in close proximity to the animal for longer than is desirable in order to enable the person to not only access and grip the filter paper but also remove it from the male component. Also, the filter paper, because it is sandwiched, might not easily release from the male component.

Applicant submits that it is entirely evident that the transverse orientation of the sampling device with absorbent material paper, as now defined in claim 12, overcomes the problem of accessibility. However, what the Examiner apparently has not taken into consideration is that claim 12 refers to the sampling device as not only extending laterally to the female tag component but also having an attachment which, in use, enables the sampling device to be fixed to one of the jaws of the applicator tool. Consequently, when the applicator tool is removed from the animals' ear during the normal ear tagging operation, the sampling device is separated from the female tag component. This attachment is a structure which is not taught or suggested by the prior art.

A further advantage of the present invention is that the absorbent material of the sampling device is in closer proximity to biological material removed from the animals' ear during the application process. This is because the head of the male component moves through the animals ear and carries with it biological material onto the absorbent material. With Sanjurjo the success of the sampling operation is reliant on biological material somehow making its way from the animals wound against the action of the male component in order to flow onto the filter material. The present invention thus, provides a much more positive means of ensuring that a biological sample is applied to the absorbent material during the normal ear tagging operation.

Additionally, Applicant notes that Sanjurjo relies on blood seeping from the wound created by attachment of the ear tag. Blood must seep back towards the male component where the filter paper is located, and this seeping must happen against the action of the male component

as it forces its way through the animal's ear tissue. This is an unreliable method of collecting a sample.

In contrast, the Applicant's device requires the absorbent material to be on the female side, where tissue will be carried towards the absorbent material by the action of the male component. This is a much more reliable configuration.

In addition, claim 12 has been amended to clarify that the punch P of the male tag component in fact passes through the absorbent material. This again improves the reliability of the sampling system, because biological material collected by the punch as it passes through the animal's ear is physically carried through or past the absorbent material, which reliably collects a sample of the biological material.

None of the cited references discloses a sampling system including an absorbent material positioned on the female side, nor do they indicate any appreciation of the advantages of this configuration.

In addition, none of the cited references disclose a sampling system where a punch P passes through an absorbent sampling material, nor do they indicate any appreciation of the advantages of this configuration.

For at least the reasons discussed above with respect to claim 12, claims 13, 14 and 16-20, based on their dependency on claim 12, are patentable over the cited prior art of record.

In addition, Claim 13 requires that the absorbent material is transverse to the direction of penetration of the punch and the axis of the female component's hollow head. This orientation facilitates the punch passing through the absorbent material. In addition, in claim 13 the absorbent material must be positioned posterior to the animal's ear wall, which facilitates collection of the biological sample. None of the cited references disclose such a system, nor do they indicate any appreciation of the advantages of this configuration.

Furthermore, Claims 17 and 19 requires a slit in the sampling device over the female component's hollow head. This facilitates the punch passing through the absorbent material. Again, none of the cited references disclose such a feature, nor do they indicate any appreciation of the advantages of this configuration.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 13, 14 and 16-20 under 35 U.S.C. §103(a).

Claim 20 is further rejected under 35 U.S.C. § 103(a) as being unpatentable over Howe as applied to claim 12, in view of Brem (US Patent No. 6,509,187). Brem discloses a sampling system which is generally similar to Caisley. The device, as is the case in Caisley, does not use an absorbent material. For this reason, and the reasons discussed above with reference to claim 12, claim 20 is not obvious over Howe in view of Brem. Accordingly, reconsideration and withdrawal of the rejection of claim 20 under 35 U.S.C. § 103(a) is respectfully requested.

In view of the foregoing, it is submitted that claims 12-20 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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